

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

**In Re:**

**Eric C. Miller,  
  
Debtor(s).**

**Case no. BKY: 04-45063**

**Chapter 7 Case**

**NOTICE OF HEARING AND MOTION**

TO: The Debtor(s) and other entitles specifies in Local Rule 9013-3.

1. USAA Federal Savings Bank moves for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 2:00 p.m. on October 28, 2004, in Courtroom No, 8 West at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota
3. Any response to this motion must be filed and delivered not later than October 25, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 21, 2004, which is seven days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on 09/10/2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and Fed. Bankr. P. 4001 and 9013. This motion requests relief from the automatic stay to proceed to enforce it rights under applicable state or federal law with respect to a 2002 Ford F150 Lariat motor vehicle , VIN # 1FTRW08L42KC10595 ("Vehicle") which secures it claim against the debtor(s).
6. The debtor(s) scheduled the Vehicle and stated a value of \$ 25,000.
7. The NADA Blue Book value of the Vehicle is between \$15,450 and \$ 18,425. A copy of the applicable NADA Blue Book printout is attached hereto as Exhibit A.
8. The Debtor(s) currently owe(s) Movant the principle amount of \$23,513.50, plus interest at 5.50 % per annum. Copies of the loan documents are attached hereto as Exhibit B.

9. Movant's claim is secured by a valid lien noted on the Certificate of Title, a copy of which is attached hereto as Exhibit C.

10. The debtor(s) monthly payments are \$630.32. The payments are in arrears for two (2) months.

11. Debtor(s) has/have no equity in the Vehicle and cause exists to lift the automatic stay pursuant to 11 U.S.C. 351(d)(2).


WHEREFORE, USAA Federal Savings Bank moves the court for an order that grants its motion for relief from the automatic stay and such other relief as are just and equitable.

DATED: September 29, 2004

/e/David Jon Hoiland  
David Jon Hoiland #46085  
Attorney for Movant  
120 S. 6th St. Suite 1100  
Minneapolis, MN 55402  
(612) 339-3100

Verification: I, Dianna Felan, the Designated Agent for USAA Federal Savings Bank, the Movant named in the attached Notice of Hearing and Motion declare under penalty of perjury that 1) I have reviewed the documents and files of the Movant relevant to this matter, and that 2) the facts stated in this Motion are true and correct according to my best knowledge, information, and belief.

Executed on sep 21, 2004

Signed:   
Dianna Felan  
USAA Federal Savings Bank  
10750 McDermott Fwy  
San Antonio, TX 78288-0544

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

**In Re:**

**Eric C. Miller,  
  
Debtor(s).**

**Case no. BKY: 04-45063**

**Chapter 7 Case**

**MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY**

USAA Federal Savings Bank ("Movant") a secured creditor herein, has moved the court for order granting it relief from the automatic stay for cause pursuant to 11 U.S.C. §362(d) to proceed to enforce its rights under applicable state or federal law with respect to a 2002 Ford F150 Lariat motor vehicle, VIN # 1FTRW08L42KC10595 ("Vehicle") which secures its claim against the debtor(s). The pertinent facts are:

1. The debtor(s) scheduled the Vehicle and stated a value of \$ 25,000.
2. The NADA Blue Book value of the Vehicle is between \$15,450 and \$ 18,425. A copy of the applicable NADA Blue Book printout is attached to the Motion as Exhibit A.
3. The Debtor(s) currently owe(s) Movant the principle amount of \$23,513.50, plus interest at 5.50 % per annum. Copies of the loan documents are attached to the Motion as Exhibit B.
4. Movant's claim is secured by a valid lien noted on the Certificate of Title, a copy of which is attached to the Motion as Exhibit C.
5. The debtor(s) monthly payments are \$630.32. The payments are in arrears for 2 months.
6. Debtor(s) has/have no equity in the Vehicle and cause exists to lift the automatic stay pursuant to 11 U.S.C. §326(d)(2).

Clearly, the debtor(s) have no equity in the Vehicle and it is not necessary for a successful reorganization as the case is a Chapter 7 liquidations case. There is also no value in the Vehicle for the bankruptcy estate to realize from a sale.

11 U.S.C. §362(d)(2) provides that a creditor is entitled to relief from stay for a secured creditor to proceed under state or federal law to enforce its rights against collateral where the

debtor has no equity and the collateral is not necessary for an effective reorganization. In this case, the amount owed on the Vehicle by the debtor(s) is significantly greater than the value of the vehicle. USAA Federal Savings Bank is entitled to relief from stay to proceed against the Vehicle as requested.

DATED this 29th day of September, 2004.

By -e- signature David Hoiland  
David Hoiland #46085  
Attorney for Movant  
120 S. 6th St. Suite 1100  
Minneapolis, MN 55402  
(612) 339-3100



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1 - Body Style

2 - Make

3 - Year

4 - Model &amp; Trim

5 - Mileage &amp; Options

6

Used Values: **Vehicle Report**

**Pickup Truck**  
 2002 Ford F150 Pickup-1/2 Ton-V8  
 Supercab King Ranch 6 3/4'  
 "WS" designates Work Truck

September 20, 2004

1,3, or 8 as the 3rd position of the model # denotes 4WD

Std. Lightning, SuperCrew Lariat/Harley, K-Ranch

Std. Lightning, SuperCrew Lariat/King Ranch/Harley

**Estimate Payment****\$586.78/Month\*\***

\*\*based on \$1,000 down, 4.3%  
 interest rate, 8.25% sales tax, 36  
 months

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	<u>Average Trade-In</u>	<u>Average Retail</u>
<b>Base Price</b>		
	\$17,450	\$20,425
<b>Options</b>		
V6 Engine	\$-725	\$-725
W/out Air Conditioning	\$-700	\$-700
W/out Automatic Trans.	\$-575	\$-575
<b>TOTAL PRICE</b>	<b>\$15,450</b>	<b>\$18,425*</b>

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**Other Vehicle Information**  
**Acceptable Mileage Range:**  
**Model Number:** N/A  
**Weight:**

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**Average Trade-In**  
 An Average Trade-In vehicle should be clean and without glaring defects. Tires and

**EXHIBIT**

ADVERTISING

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glass should be in good condition. The paint should match and have a good finish. The interior should have wear in relation to the age of the vehicle. Carpet and seat upholstery should be clean and all power options should work. The mileage should be within the acceptable range for the model year. The "Average Trade-In" value is a national average calculated from the Official Used Car Guide's ten regions. The "Average Trade-In" value for your vehicle could be higher or lower than the national average due to your local market conditions.

#### Average Retail Value

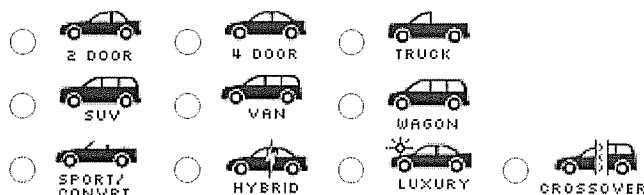
An average retail vehicle should be clean and without glaring defects. Tires and glass should be in good condition. The paint should match and have a good finish. The interior should have wear in relation to the age of the vehicle. Carpet and seat upholstery should be clean, and all power options should work. The mileage should be within the acceptable range for the model year.

An Average Retail vehicle on a dealer lot may include a limited warranty or guarantee, and possibly a current safety and/or emission inspection (where applicable).

**Note:** Vehicles with low mileage that are in exceptionally good condition and/or include a manufacturer certification can be worth a significantly higher value than the Average Retail price shown.

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<b>ERIC C MILLER</b> <b>JILL M MILLER</b> <b>2449 NW 52ND ST</b> <b>MAPLE LAKE, MN 55358-2705</b> <b>BORROWER'S NAME AND ADDRESS</b> *I* Includes each Borrower above, jointly and severally.	<b>USAA FEDERAL SAVINGS BANK</b> <b>10750 MCDERMOTT FWY</b> <b>SAN ANTONIO, TX 78288-0544</b> <b>LENDER'S NAME AND ADDRESS</b> *You* means the Lender, its successors and assigns.	<b>Loan Number</b> 31651433 <b>Date</b> OCTOBER 25, 2002 <b>Maturity Date</b> NOVEMBER 24, 2007 <b>Loan Amount</b> 32853.77 <b>Renewal Of</b>
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TERMS FOLLOWING A BOX ☐ APPLY ONLY IF THE BOX IS CHECKED.

NOTE - For value received, I promise to pay to you, or your order, at your address above, the principal sum of:

**THIRTY TWO THOUSAND EIGHT HUNDRED FIFTY THREE DOLLARS AND 77/100**

Dollars \$ **32853.77**

plus interest from **OCTOBER 25, 2002** at the rate of **5.5000** % per year until **NOVEMBER 24, 2007**

PAYMENTS - I will pay this note as follows:

- (a) ☒ In **80** installment payments. The first payment will be in the amount of \$ **630.32** and will be due **DECEMBER 24, 2002**.  
 A payment of \$ **630.32** will be due on the **24TH** day of each **MONTH**.  
 The final payment of the entire unpaid balance of principal and interest will be due **NOVEMBER 24, 2007**.
- (b) ☐ (other)

INTEREST - Interest accrues on a **ACTUAL/365** basis.

☒ POST-MATURITY INTEREST - Interest will accrue at the rate of **18.00** % per year on the balance of this note not paid at maturity, including maturity by acceleration.

SECURITY - You have certain rights that may affect my property as explained on page 2. This loan ☒ is ☐ is not further secured.

- (a) ☐ This loan is secured by \_\_\_\_\_, dated \_\_\_\_\_.
- (b) ☒ Security Agreement - I give you a security interest in the Property described below. The rights I am giving you in this Property and the obligations and agreement secured are defined on page 2 of this agreement.

**2002 FORD F150 LARIAT VIN 1FTRW08L42KC10585**

THE PURPOSE OF THIS LOAN IS - **PURCHASE MONEY**

This Property will be used for personal, family or household purposes, unless otherwise specified above.

<b>ANNUAL PERCENTAGE RATE</b> The cost of my credit as a yearly rate. <b>5.4833</b> %	<b>FINANCE CHARGE</b> The dollar amount the credit will cost me. <b>4965.19</b>	<b>AMOUNT FINANCED</b> The amount of credit provided to me or on my behalf. <b>32853.77</b>	<b>TOTAL OF PAYMENTS</b> The amount I will have paid when I have made all scheduled payments. <b>37818.96</b>
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My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
59	\$ 630.32	MONTHLY DUE STARTING 12/24/2002
1	\$ 630.08	FINAL PAYMENT DUE 11/24/2007

Security - I am giving a security interest in:

☒ the goods or property being purchased. **2002 FORD F150 LARIAT VIN 1FTRW08L42KC10585**

☐ my deposit accounts and other rights to the payment of money from you.

☐ collateral securing other loans with you may also secure this loan.

Prepayment - If I pay off this note early, I will not have to pay a penalty.

Using Fees and Taxes - \_\_\_\_\_

I can see my contract documents for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE - Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional costs. I have read and understand the insurance and cost disclosures on the enclosed Credit Protection Information Sheet.

Type	Premium	Term
Credit Life		
Credit Disability		
Joint Credit Life		

I ☐ do ☒ do not want credit life insurance.

I ☐ do ☒ do not want credit disability insurance.

I ☐ do ☒ do not want joint credit life insurance.

I ☐ do ☐ do not want \_\_\_\_\_ insurance.

☒ DOB

☒ DOB

PROPERTY INSURANCE ☒ IS REQUIRED. ☐ IS NOT REQUIRED. I may obtain property insurance from anyone I want that is acceptable to you.

Any person who signs within this enclosure agrees to the terms and conditions of the Third Party Agreement on the reverse.

I HAVE RECEIVED A COMPLETED COPY OF THIS NOTE AND SECURITY AGREEMENT.

NAME \_\_\_\_\_

X \_\_\_\_\_

NAME \_\_\_\_\_

X \_\_\_\_\_

#### ITEMIZATION OF AMOUNT FINANCED

AMOUNT GIVEN TO ME DIRECTLY	\$	0.00 (a)
AMOUNT PAID ON MY LOAN ACCOUNT	\$	0.00 (b)
	\$	0.00 (c)
AMOUNTS PAID TO OTHERS ON MY BEHALF:	\$	0.00 (d)
MONTICELLO FORD MERCURY	\$	32853.77 (e)
	\$	0.00 (f)
PREPAID FINANCE CHARGE	\$	0.00 (g)
AMOUNT FINANCED (a through f - h)	\$	32853.77 (h)
FINANCE CHARGE (including prepaids)	\$	4965.19 (i)
TOTAL OF PAYMENTS (g + i + j)	\$	37818.96 (k)

SIGNATURES - I AGREE TO THE TERMS SET OUT ON PAGE 1 AND PAGE 2 OF THIS AGREEMENT. I HAVE RECEIVED A COPY OF THIS DOCUMENT ON TODAY'S DATE.

COSIGNERS - SEE NOTICE ON PAGE 2 BEFORE SIGNING.

Signature **ERIC C MILLER**

Signature **JILL M MILLER**

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

SIMPLE INTEREST NOTE, DISCLOSURE, AND SECURITY AGREEMENT

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CONSUMER LOAN NOT FOR OPEN-END CREDIT

Page 1 of 2

EXHIBIT **B**



MINNESOTA DEPARTMENT OF PUBLIC SAFETY  
DRIVER & VEHICLE SERVICES DIVISION  
445 MINNESOTA ST., ST. PAUL, MN 55101

CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

MILLER ERIC CRAIGIE OR  
MILLER JILL MARIE  
2449 62ND ST NW  
MAPLE LAKE MN 55358

First Class  
U.S. Postage  
**PAID**

Permit No. 171  
St. Paul, MN

JWP284

02 Year	FORD Make	CWCOF Model	K3220P324 Title NR.
1FTRW08L42KC10595 VIN		10/22/02 Security Date	NO Rebuilt

1ST SECURED PARTY

**LIEN HOLDER**

**RETAIN THIS DOCUMENT** - See reverse  
side of this form for removing this lien.

USAA FSB

P O BOX 660986

SACRAMENTO CA 95866-0986



EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

**In Re:**

**Eric C. Miller,  
Debtor(s).**

**Case no. BKY: 04-45063**

**Chapter 7 Case**

**ORDER GRANTING RELIEF FROM STAY**

By Notice and Motion filed with the Clerk of Court on the 28<sup>th</sup> day of October, 2004, the Movant, USAA Federal Savings Bank, requested relief from the automatic stay to proceed under applicable law to enforce its rights as a secured creditor against the motor vehicle identified in the motion. Service was made on the parties required to be served under Local Rule 9013-3.

The Court having reviewed the pleadings submitted in support of the motion, the pleadings, if any, filed in opposition to it, all interested parties having had an opportunity to be heard, good cause appearing, it is hereby

ORDERED that the automatic stay is hereby lifted pursuant to 11 U.S.C. §362(d)(2), as to USAA Federal Savings Bank, or its employees, agents, or assigns, to permit it to enforce its rights under applicable state or federal law in the following motor vehicle: 2002 Ford F150 Lariat motor vehicle , VIN # 1FTRW08L42KC10595.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2004.

\_\_\_\_\_  
Robert J. Kressel  
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA**

**In Re:**

**Eric C. Miller,  
  
Debtor(s).**

**Case no. BKY: 04-45063**

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**UNSWORN CERTIFICATE OF SERVICE**

I, David Jon Hoiland, declare under penalty of perjury that on Wednesday, September 29, 2004 I mailed copies of the foregoing Memorandum In Support For Relief From Stay with Exhibits, Notice of Hearing and Motion, , Verification For Motion For Relief From Stay, Certificate of Service and a proposed Order Granting Relief From Stay by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Eric C. Miller  
Jill M. Miller  
2449 62<sup>nd</sup> St NW  
Maple Lake, MN 55358

Joseph W. Dicker  
1406 W Lake St Ste 208  
Minneapolis, MN 55408

Doraine A. Larison  
1010 W St Germain Rm 600  
St Cloud, MN 56301

US Trustee  
1015 U S Courthouse  
300 S 4<sup>th</sup> St  
Minneapolis, MN 55415

Executed on: September 29, 2004

Signed: /e/David Jon Hoiland  
David Jon Hoiland